

94 FERC ¶ 61,359
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Southwest Power Pool, Inc. Docket No. RT01-34-000

Entergy Services, Inc. Docket No. RT01-75-000

Northern States Power Company (Minnesota)
and Docket No. EC99-101-003
New Century Energies, Inc.

ORDER ADDRESSING RTO SCOPE
AND OTHER ISSUES

(Issued March 28, 2001)

On October 13, 2000, the Southwest Power Pool, Inc. (SPP) submitted a proposal, in Docket No. RT01-34-000, seeking authorization to establish itself as a Regional Transmission Organization (RTO), pursuant to the Commission's requirements for RTOs, set forth in Order No. 2000.¹ In a companion filing made on October 16, 2000, in Docket No. RT01-75-000, Entergy Services, Inc., on behalf of the Entergy Operating Companies (collectively, Entergy),² requests authorization to create an independent, for-profit transmission company (Transco) to operate within the umbrella of and to operate under the oversight of the SPP RTO. Entergy also seeks approval, pursuant to section 203 of the

¹Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), petitions for review pending sub nom., Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir.).

²The Entergy Operating Companies include Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.

Federal Power Act (FPA)³ to transfer the transmission assets of the Entergy Operating Companies to the Transco. In a subsequent filing, made by Entergy on December 29, 2000, Entergy seeks approval, pursuant to section 205 of the FPA,⁴ for the rates and services that would govern transmission service over the Transco's system.

As discussed below, in this order we: (1) address an aspect of independence of the Transco, i.e., the Transco's board selection process, because Entergy requested a determination on that issue in order to proceed to the next step in its formation; (2) find that we cannot now approve the scope and regional configuration of the SPP RTO because SPP members failed to comply with our previous orders and because SPP failed to sufficiently discuss the feasibility of a broader RTO with other entities in the region; and (3) address a request by Southwestern Public Service Company that it be allowed to join the SPP RTO in fulfillment of a merger condition. These issues are time-sensitive in light of the evolving RTO formative process in the Southeast and the Midwest and Entergy's specific request for action in March.

To date, the formation of the SPP RTO remains a work in progress. The SPP members remain uncommitted to the RTO because they have indicated that they have not made a decision to transfer of operational control of their respective transmission facilities to the RTO, as Order No. 2000 requires. In addition, the relationship between SPP and Entergy remains somewhat undefined, which causes concern that the proposed region may not actually operate as a single effective RTO. Accordingly, we urge both SPP and Entergy, either together or separately, to look for opportunities for an expanded RTO. This expansion should include other regional entities with RTO proposals filed with the Commission. We will require SPP and Entergy to file a report with the Commission, by May 25, 2001, addressing the scope issue in greater detail.

Background

A. SPP and Entergy

SPP is an Arkansas non-profit corporation with its principal place of business in Little Rock, Arkansas. SPP currently has 50 members and serves more than 6.5 million customers in a 400,000 square-mile area covering all or part of the states of Arkansas, Kansas, Louisiana, Mississippi, Missouri, New Mexico, Oklahoma, and Texas. SPP's members include 13 investor-owned utilities, seven municipal systems, eight generation and transmission cooperatives, three state authorities, one federal power marketing agency,

³16 U.S.C. § 824b (1994).

⁴Id. at § 824d.

one wholesale generator, and 17 power marketers. In 1968, SPP became a regional reliability council, within the North American Electric Reliability Council (NERC). SPP began administering regional transmission service on June 1, 1998.⁵

Entergy provides general executive and administrative services to the Entergy Operating Companies, which own and operate generation, transmission, and distribution facilities in Arkansas, Louisiana, Mississippi, and Texas. The Entergy transmission system comprises approximately 15,000 miles of transmission lines and extends from the southeastern portion of Missouri to the southern-most part of Louisiana. It includes the western part of Mississippi and the southeastern part of Texas. Entergy was formerly an SPP member, but withdrew from membership in 1997. Effective September 1, 2000, Entergy rejoined SPP as an associate member. However, for reliability purposes, it remains a member of the Southeastern Electric Reliability Council (SERC).

B. The May 17 Order

SPP previously sought recognition as an independent system operator (ISO) in Docket No. EL00-39-000. In its filing in that proceeding, SPP claimed that it satisfied the Commission's ISO principles, as set forth in Order No. 888,⁶ and that it also satisfied the Commission's requirements for RTOs, as set forth in Order No. 2000.

In an order issued May 17, 2000, the Commission found that SPP's ISO/RTO proposal required modification to meet the standards necessary for recognition as an RTO.⁷ Among other things, we directed SPP to address in any new proposal "whether it is feasible for SPP to join with other groups engaged in forming RTO's in the region." We found that SPP's regional configuration, which excluded its former members, such as

⁵Southwest Power Pool, Inc., 82 FERC ¶ 61,267, order deferring effective date, 82 FERC ¶ 61,285 (1998).

⁶Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), order on reh'g, Order No. 888-B, 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part sub nom. Transmission Access Policy Study Group., et al. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), cert granted, 69 U.S.L.W. 3574 (Nos. 00-568 (in part) and 00-809) and cert denied, id. (No. 01-800) (U.S. Feb 26, 2001).

⁷Southwest Power Pool, Inc., 91 FERC ¶ 61,137 (2000) (May 17 Order).

Entergy, was inadequate.⁸ We also found that SPP's proposal failed to comply with Order No. 2000's requirement that an RTO proposal be accompanied by section 203 applications requesting transfer of control of the public utilities' jurisdictional transmission assets to the RTO.⁹ In addition, we noted our finding in Order No. 2000 that an RTO, in order to meet our independence requirement, must have operational authority for all transmission facilities under its control. Accordingly, we found that Section 2.1.1 of SPP's Membership Agreement, which provided that "SPP shall not operate or direct the operation of the Tariff Facilities except in its role as Security Coordinator," failed to satisfy the requirements of Order No. 2000.¹⁰

C. Entergy July 30 Order

In an earlier filing, in Docket No. EL99-57-000, Entergy filed a petition for a declaratory order requesting preliminary guidance on its proposal to create an affiliated, for-profit transco based on the Commission's ISO principles set forth in Order No. 888. In Entergy Services, Inc., 88 FERC ¶ 61,149 (1999) (July 30 Order), order denying reh'g, 90 FERC ¶ 61,191 (2000), we stated, among other things, that were Entergy to file a transco proposal with the Commission, it would need to address the proposed transmission company's board selection and removal procedures, and the board's fiduciary duties.

D. SPP's Filing

In its filing, SPP states that it has revised the documents previously filed with the Commission, in Docket No. EL00-39-000, and that so revised, SPP's proposed RTO generally satisfies the requirements of the May 17 Order and Order No. 2000. SPP requests that the Commission conditionally grant SPP RTO status, subject to SPP's members transferring the ownership or operational control of their transmission facilities to the SPP RTO.

SPP states that the duties and powers of the SPP RTO, and the corresponding rights and obligations of its members, are set forth in an RTO Membership Agreement, which is included in its filing. SPP states that under the RTO Membership Agreement, the SPP RTO would be empowered by its members to operate and control their respective transmission

⁸Id. at 61,350.

⁹Id. at 61,525-26.

¹⁰SPP's Membership Agreement, as it relates to SPP itself (not SPP as an RTO), was previously accepted by the Commission in Southwest Power Pool, Inc. 89 FERC ¶ 61,284 at 61,895-96 (1999).

facilities, including the switching of transmission elements into and out of operation in the transmission system, monitoring and controlling real and reactive power flows, monitoring and controlling voltage levels, and scheduling and directing the operation of reactive resources. The SPP RTO would also be responsible for overseeing the receipt, confirmation, and implementation of all interchange schedules. In addition, the SPP RTO would act as the security coordinator for the RTO system, and would be responsible for reviewing and approving the planned maintenance schedules of its members. SPP states that the SPP RTO would also be responsible for planning activities, and for directing or arranging, necessary transmission expansions, additions, and upgrades that would enable the SPP RTO to provide efficient, reliable, and non-discriminatory transmission service.

Finally, SPP states that it has executed a Memorandum of Understanding (MOU) with Entergy, which would allow the Transco to operate as an independent transmission company, within the SPP RTO. The MOU is discussed in greater detail below. SPP asserts that with the inclusion of the Transco within its RTO, the scope and configuration of the SPP RTO would be significantly increased. In addition, SPP claims that the Transco's inclusion in the SPP RTO would improve reliability in the region, and would increase market efficiency.

E. Entergy's Related Filing

Entergy seeks authorization, pursuant to section 203 of the FPA, to transfer the operational control its transmission facilities to the Transco, which would operate under the oversight of the SPP RTO. Entergy's filing is discussed in greater detail below.

F. Notices and Responsive Pleadings

Notice of SPP's filing was published in the Federal Register,¹¹ with interventions, comments, or protests due on or before November 20, 2000. Notice of Entergy's filings were published in the Federal Register,¹² with interventions, comments, or protests due on or before November 20, 2000, regarding its initial filing, and on January 29, 2001 and February 7, 2001, respectively, regarding its rate filing and supporting work papers.

Interventions were filed by the parties noted in the appendix to this order. Protests and comments were filed by the parties noted below in our discussion section of this order, and as noted in the appendix. In addition, answers to protests and answers to answers were filed, in Docket No. RT01-34-000, by SPP, SWEPCO, Public Service Company of

¹¹65 Fed. Reg. 64,214, 64,696 (2000).

¹²Id. at p. 64,216, and 66 Fed. Reg. 2424, 8578 (2001).

Oklahoma, Wyandotte County, et al., and by East Texas, et al.; and in Docket No. RT01-75-000, by Entergy and Occidental.¹³ On November 6, 2000, and November 21, 2000, respectively, Aquila, et al. and Louisiana Energy Users, et al. filed motions to consolidate Docket Nos. RT01-34-000 and RT01-75-000. Responsive pleadings opposing consolidation were filed by Entergy and Cleco.

Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the state Commission's notices of intervention and the timely, unopposed motions to intervene serve to make the entities that filed these pleadings parties to those proceedings to which their interventions relate. In addition, the motions to intervene out-of-time filed by the parties noted in the appendix are hereby granted, given our determination that granting these interventions at this stage of these proceedings will not disrupt these proceedings or place any undue prejudice on existing parties.

Rule 213(a) of the Commission's Rules of Practice and Procedure,¹⁵ prohibits an answer to a protest and an answer to an answer, unless otherwise permitted by the decisional authority. We are not persuaded to allow the answers filed by SWEPCO and PSC, Wyandotte, et al., and East Texas, et al., or the answer to an answer filed by Occidental, and therefore reject these pleadings. However, we will accept the answers filed SPP and Entergy, given the complex nature of this proceeding and because these answers aided in clarifying certain issues, as discussed below.

B. RTO Independence

In Order No. 2000, we held that an RTO must be independent of any market participant, and that this principle of independence must apply to all RTO's, whether they are ISOs, transcos, or variants of the two.¹⁶ Entergy has asked for an early determination

¹³A motion to strike SWEPCO's answer was filed by East Texas Cooperative on December 15, 2000.

¹⁴18 C.F.R. § 385.214 (2000).

¹⁵Id. at § 385.213(a)(2).

¹⁶Order No. 2000 at 31,061.

that its transco proposal satisfies the independence criterion in terms of its proposed board of directors selection process.

1. Entergy's Board Selection Process

Entergy proposes to create an independent, incentive-driven transmission company (Transco) to operate under the oversight of the SPP RTO. Entergy and other transmission owners who transfer their transmission assets to Transco will receive passive ownership interests in Transco. Transco may also obtain operational control over other transmission assets.

An independent board of seven directors (Managing Member) will be established to manage all business affairs of Transco. Entergy states that the Managing Member will be independent of any Market Participant; will have neither financial interest in, nor affiliation with, any Market Participant; and must comply with Transco's code of conduct. To ensure board independence, transmission owners forming Transco will hire a search firm¹⁷ to select a pool of 14 qualified candidates for consideration as directors. Entergy states that the pool of candidates must meet the following requirements: (1) have qualifications equivalent to those directors of public corporations with revenues equivalent to or larger than Transco is expected to have; (2) at least eight of the candidates must be or have been either a president, chief executive officer, chief operating officer, or director of a publicly traded corporation; and (3) at least four of the candidates must have had meaningful experience in the electric utility industry. A Board Selection Committee will be formed to elect the initial directors from the pool of candidates.

The Board Selection Committee will consist of seven stakeholders from the following groups: (1) two representatives from transmission owners who intend to divest their transmission facilities to Transco; (2) one representative from transmission owners who intend to transfer operational control of their transmission facilities to Transco; (3) two representatives from a group of regional cooperatives, municipalities, and federal power marketing agencies; and (4) two representatives from a group of regional power marketers, brokers, or entities that own or develop generating facilities.

The seven Managing Member directors will serve three-year staggered terms and will initially be self-perpetuating. Once the Managing Member issues voting stock to outside investors, directors will be elected by all the voting shareholders. Entergy states that Market Participants may not own voting securities of the Managing Member or have active ownership of Transco. Entergy has requested Commission action in March.

¹⁷The transmission owners state that they will choose one of three search firms.

2. Comments

The Louisiana Commission asserts that the managing member of the Transco would not have sufficient independence from the Transco's passive owner, i.e., from Entergy. The Louisiana Commission states that this is so because the initial board of the managing member would be selected by a board selection committee that would include the transmission owners in the region, including Entergy. The candidates would be selected by a search firm hired by the transmission owners who agree to form the Transco (again, Entergy). The Louisiana Commission concludes that because there would be no limit to the number of terms that any director could serve, it would be conceivable that the initial board would be selected with considerable input from Entergy and then serve for an unlimited period.

3. Discussion

We find that Entergy's proposal for a Managing Member which controls all voting rights to the Transco is a reasonable structure. Further, we find that the Transco Managing Member Board selection process meets the independence criterion of Order No. 2000. In our July 30 Order, we gave general approval to Entergy's board selection process.¹⁸ However, we noted that an actual application would need to include more specifics concerning the workings of the board selection. Entergy has met the requirements of the July 30 Order. The proposal includes information as to how representation of stakeholders is assured and how voting will be conducted.

We have approved a similar board selection process for GridFlorida¹⁹ in the RTO context. We disagree with the Louisiana Commission that the board selection process would not ensure sufficient independence. The process includes a selection of candidates by an outside, independent consultant and election by a committee of stakeholders. Transmission owners would control a minority of this committee, and Entergy would control no more than two of the Committee's seven members. We are convinced that this process provides for sufficient independence in the board selection.

C. Scope and Regional Configuration

¹⁸July 30 Order at 61,501.

¹⁹GridFlorida, LLC, et al., 94 FERC ¶ 61,020 at 61,046 (2001).

In Order No. 2000, we held that an RTO must serve an appropriate region, i.e., a region of sufficient scope and configuration to permit the RTO to effectively perform its required functions and to support efficient and non-discriminatory power markets.²⁰

1. SPP's Proposal

SPP asserts that it will meet the minimum requirements set forth in Order No. 2000, regarding scope and regional configuration, and that it has addressed the concerns raised about this issue in the May 17 Order. SPP claims that when Entergy is taken into account, SPP's proposed RTO boundaries constitute an electrically coherent area, and a contiguous region that is of substantial size and scope. SPP also claims that its size exceeds the size of a number of currently operating ISOs in terms of overall generation capacity, peak load, service area, and total transmission miles.²¹

SPP states that it has addressed the concern raised by the Commission in the May 17 Order regarding the size of its membership ranks. Specifically, SPP notes that Entergy has now rejoined SPP, and that Southwestern Public Service Company has recently placed its facilities under SPP's OATT. SPP also states that it has held discussions with UtiliCorp United, Inc., Central Louisiana Electric Company, and Sunflower Electric Power Corp.

SPP states that its members have not filed section 203 applications to transfer control over their transmission assets to the SPP RTO but that they will do so prior to initiation of the RTO.

2. Entergy's Proposal

Entergy states that the SPP Partnership RTO is of sufficient scope and configuration. According to Entergy, Entergy, by itself, is comparable in size to the New York, New England and PJM ISO's. In addition, Entergy states that when combined with SPP, the total size of the RTO is far larger. Entergy also considers the nine specific factors identified by the Commission²² and concludes that these factors support the conclusion that the SPP Partnership RTO is of appropriate scope and configuration.

²⁰Order No. 2000 at 31,079.

²¹SPP compares itself on these measures to the California ISO, ERCOT, ISO-NE, the NYISO, and PJM.

²²See Entergy's Application, Volume 1 of 2, at pages 50-52.

Entergy states that in determining the sufficiency of the RTO's scope and configuration, the Commission should consider whether the RTO has control over a large majority of transmission facilities in the region. According to Entergy, the Transco will have control over the vast majority of transmission facilities in the region, and the few small holes represented by facilities of municipalities and other utilities not regulated by the Commission under section 205 of the FPA have been invited to join the SPP Partnership RTO. In addition, Entergy has drafted the Operating Agreement to allow them to commit their assets to the Transco and to make it easier for potential members to join the RTO.

3. Proposal for Joint Operation

In a memorandum of understanding (MOU), SPP and Entergy set forth the conditions by which they have agreed to allow Entergy's, Transco, to operate within the structure and under the oversight of an SPP RTO. The MOU would give the SPP RTO the responsibility for the following: (1) performing regional security coordination for the SPP and the Transco's systems; (2) making all ATC calculations; (3) seeking input from market participants regarding the Transco's policies; (4) overseeing a regional transmission expansion planning process; and (5) providing an appropriate forum for market monitoring and dispute resolution. In addition, the MOU sets forth the parties' commitment to preventing rate pancaking between their two regions. The MOU gives the Transco the option of becoming a member of the SPP board.

4. Comments

Oneok argues that even with Entergy included in the SPP RTO, SPP still cannot satisfy the Commission's scope and configuration requirement, because SPP has failed to reach an agreement with any former members other than Entergy. Oneok argues that currently there are holes within the SPP region, since it does not include such utilities as Western Resources and UtiliCorp.

Williams argues that, contrary to SPP's contention, the proposed scope and regional configuration of the proposed SPP/Entergy does not compare favorably with existing ISOs. Williams argues that the existing ISO regions should not be the standard for approving RTO boundaries under Order No. 2000. Williams adds that the RTO boundaries that make the most sense, in terms of physical flows and historical trading patterns, would encompass a significantly larger area than the one contained in SPP's proposal. Williams urges the

Commission to consider invoking its authority under section 202(a) of the FPA,²³ if necessary, to divide the country into these larger geographical units. Consistent with this directive, Williams argues that SPP should be assigned to a single Midwest RTO.

Springfield also urges the Commission to think big. Springfield argues that transmission-owning utilities, in purported compliance with Order No. 2000, have sought to transform their existing utilities into for-profit transmission companies that fail to satisfy the Commission's scope and regional configuration requirement, if properly scrutinized.

The Louisiana Commission comments that while Entergy had no real alternatives to form a partnership with RTOs in the Southeast, the Commission should consider future efforts to forge a single Southeastern RTO.

East Texas Electric Cooperative (ETEC), et al. argue that the Entergy transmission grid cannot be considered by the Commission as being a part of the proposed SPP RTO grid, for scope and configuration purposes, because Entergy's proposal to establish the Transco is fatally incomplete and based on only contingent commitments. Arkansas Electric makes the same point. Arkansas Electric concludes that the Commission should not approve any aspect of the SPP RTO, including Entergy's application, unless and until the details of the SPP Partnership RTO are finalized. ETEC, et al. also argue that the Commission rejected SPP's initial RTO proposal, in part, because SPP's members failed to seek approval to transfer control of their transmission facilities to the RTO. ETEC, et al. add that SPP's proposal, in the instant proceeding, has once again been filed without the support of these section 203 requests, and that as such, the SPP RTO fails to satisfy the Commission's scope and configuration requirement for RTOs.

Clarksdale adds that under SPP's proposal, SPP would have only a limited role regarding the provision of transmission services within Entergy, and insufficient authority to provide meaningful supervision of Entergy's activities. Clarksdale concludes that there is no justification for allowing Entergy to retain more control over its facilities than would other transmission owners that join the SPP RTO.

Lafayette Utilities, et al. argue that uncertainty over who will, and who will not, join the SPP RTO, raises doubts as to whether SPP can satisfy Order No. 2000's scope and configuration requirement, and suggests that these wavering potential members may be engaged in RTO-shopping. Lafayette Utilities, et al. argue that without both Entergy and Cleco, SPP cannot satisfy the scope and configuration requirement. Lafayette Utilities, et

²³16 U.S.C. § 824a(a) (1994).

al. also urge the Commission to impose conditions governing whether and how entities may withdraw from an RTO once they have chosen one.

The Texas Commission notes that the absence of section 203 filings should not necessarily be considered fatal to SPP's filing. It notes, however, that the Commission should condition approval of the RTO on the filing of section 203 applications by a sufficient number of utilities in the region by a date certain. The Missouri Commission and OMPA concur with this recommendation.

5. Discussion

The proposed RTO would serve a fairly large, contiguous geographic region. The region is highly interconnected and has a long history of cooperation as a NERC reliability council and as a power pool before that. The SPP RTO will not serve as a barrier, in any significant way, between two or more natural markets.

However, bulk power sales and purchase figures in the regions in which SPP and Entergy operate indicate that natural markets extend beyond the SPP RTO borders. There are significant sales and purchases between the proposed SPP RTO participants and companies in SERC and to a lesser extent, companies in the Midwest.²⁴ In our May 17 Order, we directed SPP to address in its next filing whether it was feasible to join with other groups forming RTOs in the region. SPP's filing failed to address this issue adequately. In short, while the proposed SPP RTO Partnership, with its inclusion of Entergy, represents progress made in response to the May 17 Order, it does not completely accommodate the full markets we know to exist.

We conclude, based on the evidence before us and on a general analysis of the Southeast and Southcentral parts of the country, that we cannot now approve the scope and regional configuration presented in these proposals. Before we grant final approval, the Applicants must persuade us that they have been diligent in complying with Order No. 2000 for RTO regions. We want to see evidence of serious efforts to form RTOs that combine a number of current RTO proposals to form major RTO regions in the South, in the East, in the Midwest, and in the West. Accordingly, we direct SPP and Entergy (either separately or together) to look for opportunities for an expanded RTO. To do this they must engage in serious discussions with their neighbors concerning the possibility of combining with currently proposed RTOs and concerning the addition of heretofore uncommitted transmission owners. We further direct SPP and Entergy to file a joint report no later than May 25 on the progress made in these discussions

²⁴Based on RDI POWERdat data from FERC Form 1, RUS and EIA.

Further complicating our decision on scope and regional configuration is the failure of any SPP transmission owner to commit to the SPP RTO Partnership by filing a section 203 application. The scope and regional configuration of the RTO as currently configured (assuming it comes to fruition as outlined by SPP and Entergy), and assuming that we are able to determine that the proposed region will operate as a single RTO), at best, only marginally satisfies the minimum RTO scope and configuration requirements described by the Commission in Order No. 2000. However, only a few SPP members have given a formal commitment to join the SPP RTO if the Commission approves the proposed RTO. Moreover, some transmission owning members of SPP raise considerable doubt that they will ultimately join the SPP RTO Partnership. Recognizing the very obvious and considerable efforts of SPP and Entergy to form an RTO in response to our May 17 Order, we would expect that most of the transmission owners presently in SPP will file applications under section 203 and fully commit to participation in the SPP RTO Partnership. We cannot, however, make a final determination on scope and regional configuration until we have received those applications. Therefore, we will not in this order approve the scope and configuration of the SPP RTO Partnership pending the filing of section 203 applications by the SPP transmission owners. At that time, if all the present SPP members have not committed to be part of the SPP Partnership RTO, we will reassess whether the loss of any current SPP transmission owners jeopardizes the Applicants' ability to meet the scope and regional configuration requirements of Order No. 2000.²⁵

The two applications show the proposed RTO to be a work in progress. There are a number of critical details that have not been worked out. The MOU, the main document of agreement between Entergy and SPP on the formation of the RTO, does not provide convincing detail that the two entities will operate seamlessly and effectively and as a single RTO. SPP and Entergy need to clarify their proposal to demonstrate that the minimum requirements of an RTO such as operational authority, ATC calculation and planning and expansion will be met.

In conclusion, in our May 17 Order, we directed SPP and its members to include former members in their RTO proposal, to explain whether the proposal could be expanded in the region, and to make section 203 filings with an RTO proposal. SPP came back with a proposal that included Entergy, but did not explain why an expanded RTO was not being more exhaustively pursued, and SPP members did not show commitment to the RTO with

²⁵Whatever the eventual region, sufficiency in meeting scope requirements depends on the SPP RTO, the Transco, and any additional participants operating seamlessly. The concern for seamless operation within an RTO will be discussed in a subsequent order when we have a proposal satisfying our scope and configuration concerns before us.

accompanying section 203 filings. We expect more from these parties in the status report required by this order.

Southwestern Public Service Company's Request to Change Merger Conditions

A. Background

On January 16, 2001, Southwestern Public Service Company (SPS) filed a request for alternative compliance with the merger conditions in Docket No. EC99-101-003.²⁶ In its filing, SPS requests that the Commission allow it to fulfill the merger commitment it made to join the Midwest Independent System Operator (MISO) by joining the SPP RTO. The Commission accepted the merger with specific language stating that approval was based on the commitments of each of the applicants, including the commitment of SPS to join MISO.²⁷

SPS makes its request to change its merger commitment based on several changes that have occurred since the merger was approved. First, withdrawals have weakened the MISO and made it less attractive to SPS. Second, SPP took steps to form an RTO after SPS had made its commitment in the merger proceeding. Finally, SPS has joined the SPP regional tariff and will be better situated to meet the Texas restructuring requirements by continuing with SPP.

B. Notice of Filing and Response

Notice of the filing was published in the Federal Register, 66 Fed. Reg. 11,014 (2001), with comments, protests and interventions due on or before March 2, 2001. Dairyland Power Cooperative filed a timely request for intervention without comments. No other interventions, comments or protests were filed.

C. Discussion

Dairyland Power Cooperative's timely motion to intervene serves to make it a party to Docket No EC99-101-003 .

We will grant SPS's request. The commitment was made and accepted to alleviate concerns about the effect of the merger on competition. The option of joining the SPP

²⁶Northern States Power Company (Minnesota), 90 FERC ¶ 61,020 at 61,135 (2000).

²⁷Id.

RTO was not available when SPS made its original merger commitment. Participation in the SPP RTO, instead of the MISO, will equally satisfy the competitive concerns that were present in the merger proceeding. Moreover, because SPS is located adjacent to the SPP region and currently operates under the SPP regional tariff, we believe that it is reasonable for SPS to join the SPP effort to establish an RTO.

The Commission orders:

(A) SPP and Entergy are hereby directed to file a status report regarding the scope issues raised in this proceeding on or before by May 25, 2001, as discussed in the body of this order.

(B) Entergy's proposed Transco board selection process is hereby approved, as discussed in the body of this order.

(C) SPS's request to fulfill its merger commitment by joining the SPP RTO is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

Intervenors

Intervenors in Docket No. RT01-34-000

Ameren Energy, Inc.
American Forest & Paper Association
American Transmission Company LLC (MTI out-of-time)
American Wind Energy Association & Project for Sustainable FERC Energy Policy
Aquila Energy Marketing Corp.
Arkansas Cities
Arkansas Commission (notice)
Arkansas Electric Cooperative Corporation
Arkansas Electric Energy Consumers
Automated Power Exchange, Inc.
BP Energy Company
California Electricity Oversight Board
City Utilities of Springfield, Missouri
Cleco Utility Group, Inc.
Coastal Merchant Energy
Conoco Global Power
Constellation Power Source, Inc.
Coral Power LLC
Council of the City of new Orleans
Dairyland Power Corp.
Dynegy Inc
Duke Energy North America, LLC
East Texas Electric Cooperative
Edison Mission Energy & Edison Mission Marketing & Trading, Inc.
Electric Power Association of Mississippi
Electric Power Research Institute
Energetix, Inc.
Enron Power Marketing, Inc.
Golden Spread Electric Cooperative
Industrial Consumers
Kansas City Power & Light Company
Kansas Electric Power Cooperative, Inc.
Louisiana Commission
Louisiana Energy Users Group
Louisiana Generating LLC

Midwest Energy, Inc.
Midwest Independent Transmission System Operator, Inc.
Missouri Commission
Mississippi Commission (notice)
Morgan Stanley Group Inc.
National Rural Electric Cooperative Association
New Mexico Commission (MTI out-of-time)
Nucor-Yamato Steel Co., Inc. & Nucor Steel - Arkansas
Oklahoma Commission (notice)
Oklahoma Gas and Electric Company
Oklahoma Industrial Energy Consumers
Oklahoma Municipal Power Authority
Oneok Power marketing, Inc.
Oxy USA, Inc. & Occidental Chemical Corporation
PECO Energy Co.
Rayburn Electric Cooperative Association
Reliant Energy Power Generation, Inc.
Shell Energy Services Co., LLC
South Mississippi Electric Power Association
Southwestern Power Administration
Sunflower Electric Power Corporation
SWEPCO & Public Service Company of Oklahoma
Tenaska, Inc.
Tennessee Valley Public Power Association
Texas Commission (notice)
Texas Industrial Energy Consumers
The Clarkside Public Utilities Commission
The Electric power Supply Association
The Lafayette Utilities System; Louisiana Energy & Power Authority and the Municipal
Energy Agency
The Williams Companies
TECO Power Service Corporation (MTI out of time)
Tractebel Energy marketing, Inc. and Tractebel Power, Inc.
Unified Government of Wyandotte County, KS & Kansas City, Kansas Board of Public
Utilities
Utilicorp United, Inc.
Virginia Electric & Power Company
Western Resources, Inc.

Intervenors in Docket No. RT01-75-000

Ameren Energy, Inc.
Aquila Energy Marketing Corporation
Arkansas Cities
Arkansas Electric Cooperative Corporation
Arkansas Electric Energy Consumers, Inc.
Arkansas Public Service Commission (notice)
BP Energy Company
Calpine Corporation
Clarksdale Public Utilities Commission
Cleco Utility Group Inc.
Coastal Merchant Energy, LP
Conoco Global Power
Constellation Power Source, Inc.
Coral Power, L.L.C.
Council of the City of new Orleans (notice)
Dixie Electric Membership, et al. (MTI out-of-time)
Dynergy Inc.
Duke Energy North America, LLC
Edison Mission Energy, et al
Electric Power Association of Mississippi, Inc.
Electric Power Research Institute
EPSA
Enron Power Marketing, Inc
Georgia Transmission Corporation
Industrial Consumers
Lafayette Utilities System, et al
Louisiana Energy Users Group
Louisiana Generating LLC
Louisiana Public Service Commission (notice)
Midwest Independent Transmission Systems Operator, Inc.
Mississippi Commission (notice)
Morgan Stanley Capital Group, Inc.
Municipal Energy Agency of Mississippi
National Rural Electric Cooperative Association
Nucor-Yamato Steel Company, Inc. and Nucor Steel-Arkansas
Occidental Chemical Corporation
Oglethorpe Power Corporation

ONEOK Power Marketing Company
PG&E National Energy Group
Public Utility Commission of Texas (notice)
Reliant Energy Power Generation, Inc.
Sam Rayburn G&T Electric Cooperative, Inc. and Tex-La Electric Cooperative of Texas,
Inc.
Shell Energy Services, LLC
Southern Natural Gas
South Mississippi Electric Power Association
Southwestern Electric Power Company and Public Service Company of Oklahoma
Southwestern Public Service Company (MTI out of time)
TECO Power Services Corporation
Tenaska, Inc.
Tenaska Power Services Co.
Tennessee Valley Public Power Association
Texas Commission
Texas Industrial Energy Consumers
The American Forest & Paper Association
The Williams Companies
Tractebel Energy Marketing, Inc. and Tractebel Power, Inc.
Virginia Electric & Power Company
Western Farmers Electric Cooperative
Western Resources, Inc.